

Service Date: January 5, 1979

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * *

IN THE MATTER of the Application)	
of the MOUNTAIN STATES TELEPHONE)	DOCKET NO. 6496
AND TELEGRAPH COMPANY for)	ORDER NO. 4389f
authority to establish increased)	SECOND AMENDED
rates for telephone service.)	FINAL ORDER

FINDINGS OF FACT

1. By application filed March 14, 1977, the Mountain States Telephone and Telegraph Company (Mountain Bell or Applicant) sought authority from this Commission to increase rates for the approval of tariff changes for telecommunication services provided its customers in the state of Montana. The proposed permanent rate changes would generate \$11.83 million of additional yearly revenues.

2. Following legal notice, hearings on Phase I of Docket No. 6496 commenced on November 1, 1977 and concluded November 8, 1977. On April 4, 1978, Phase II hearings began and continued through April 12, 1978.

3. Contained in its application to the Commission was Mountain Bell's request for interim relief. This request was renewed at both the November and April hearings.

4. Interim rate Orders 4389a, 4389b, and 4389c issued in March and May, 1978 granted the utility interim revenue increases totaling \$2,326 000.

5. Through Order No. 4389d, served on October 2, 1978, Mountain Bell was authorized to submit rate schedules designed to increase annual revenues by \$3,087,000; this increase was in lieu of rather than in addition to those granted on an interim basis.

6. On October 12, 1978, Applicant and the Montana Consumer Counsel (MCC) filed Motions and Briefs for Reconsideration of Order No. 4389d. Mountain Bell's Motion pleaded for reconsideration in eighteen (18) subject areas considered in the Order. Confined to one area, the Motion of MCC urged the Commission to accept the productivity adjustment rejected in the Order.

7. Later in October, Answers to Mountain Bell's Motion to Reconsider were received by the Commission from the Consumer Counsel and attorneys for Executone Systems of Montana. Mountain Bell likewise responded to MCC's Motion For Reconsideration.

8. After reviewing the Motions, Briefs and Answers dealing with reconsideration of its Order No. 4389d as well as the record in Docket No. 6496, the Commission issued its Amended Final Order, Order No. 4389e, on November 22, 1978. The Amended Order raised the allowed revenue increase to \$3,097,000 and modified the rate structure.

9. On December 1, 1978, Mountain Bell filed an Amended Motion for Reconsideration, for Rehearing and for Stay of Orders. The utility therein petitioned the Commission to order re-hearings on the intrastate toll charges authorized by Order No. 4389 and on the independent company toll

settlements. A stay of the Commission's Orders until final disposition of those matters was also requested.

10. The Montana Consumer Counsel objected to Applicant's Amended Motion, alleging that such a motion is not a recognized procedure and that other, appropriate remedies are available to the utility. Continuing in his objection, the Consumer Counsel defended the Commission's findings regarding intrastate toll charges as "an exercise of discretion well within its delegated authority."

11. In its Reply to Consumer Counsel's Objection, Mountain Bell asserted the propriety of its request for reconsideration; its request for rehearing and for a stay of orders was renewed.

Intrastate Toll Charges

12. In its Amended Motion for Reconsideration for Rehearing and for Stay of Orders, Mountain Bell alleged that the one and two minute DDD toll charges ordered by the Commission were unlikely to produce the message stimulation required for a zero toll revenue effect. The Consumer Counsel's Objection to the Amended Motion characterized the evidence presented by Mountain Bell in its Motion as "inherently fallacious" and argued that the necessary traffic stimulation was less than the utility contended and could "be absorbed by the Montana state toll network without necessarily creating a degradation of service or requiring substantial additions to clans facilities." (Objection, p. 4)

13. Consistent with Finding of Fact No. 111 in Order 4389d, the Commission continues to believe that no revenue increase is warranted from message toll and that a one-minute initial period charge is desirable. Because it never intended to deprive Mountain Bell of revenue justly due the utility, the Commission, by minute entry on December 18, 1978, found that Mountain Bell and the Consumer Counsel should be afforded the opportunity to present additional evidence, with cross-examination, on toll schedules which achieve the zero revenue impact with a one-minute charge. To this end, the hearing in Docket No. 6496 was reopened for the purpose of receiving new evidence to assist the Commission in its design of such a DDD rate structure.

14. Pursuant to Commission direction, the Commission Staff called a pre-hearing conference on December 19, 1978. Commission Staff, the Consumer Counsel and representatives for Mountain Bell attended this conference at the Commission's offices. At this conference Mr. George Bennett, counsel for Mountain Bell, offered an alternative to an additional hearing on intrastate toll rates. He suggested that the Commission amend its Amended Final Order to authorize the continuance of the present intrastate toll schedule. The Consumer Counsel stated that he would not object to this amendment.

15. In response to a request from the Commission, Mountain Bell submitted a written request reflecting the proposal made at the pre-hearing conference. The request, dated December 21, 1978, and signed by George T. Bennett, counsel for Mountain Bell, stated that:

...if the Commission were to modify its orders in this matter authorizing the company to perpetuate the intrastate toll tariffs presently in effect, Mountain Bell would drop all of its objections and exceptions to the portion of the order relating to the toll schedule (but not to those other portions as to which exceptions have been taken).

16. By minute entry on December 22, 1978, the Commission ordered that the Amended Final Order 4389e be further amended to require that the existing intrastate toll schedule remain in effect.

17. The Commission finds that Mountain Bell's proposal of December 21, 1978, constitutes a withdrawal of that portion of its Amended Motion for Reconsideration, for Rehearing and for Stay of Orders which relates to the issue of the intrastate toll schedule.

Independent Company Toll Settlements

18. Contained in Applicant's Amended Motion was the request that it be granted additional revenue to cover increased payments to independent companies resulting from Order No. 4389d. Contrary to Mountain Bell's assertion in said Motion, "substantial" evidence was not presented on the issue of independent company toll settlements. In fact, the utility's request for additional revenues as expressed in the hearing notice, and the testimonies of McDonald (Exh.1A,p.3) and of Leake (Exh.2A, p. 17) was for \$11.83 million, which is net of the amount alleged necessary for independent company settlements by Mountain Bell. Because public notice was totally inadequate on the settlements question, because Mountain Bell failed to raise the issue until after the final order, because Mountain Bell failed to present evidence on

the issue at the proper time in the proceedings in this docket, and because Mountain Bell failed to offer good reason for its failure to raise this issue in a timely manner, the Commission declines to reopen the hearings in Docket No. 6496 to receive testimony on this issue. Likewise, grounds do not exist for reconsideration.

CONCLUSION OF LAW

1. The intrastate toll schedule approved by the Commission by minute entry on December 22, 1978, as described in Finding of Fact 16 above, is just, reasonable and not unjustly discriminatory.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Order No. 4389d and Order No. 4389e in Docket No. 6496 issued October 2, 1978, are hereby incorporated by reference into this Order with the following exceptions pursuant to Order No. 4389f: Applicant shall substitute the intrastate toll schedule presently in effect for that required by Finding of Fact No. 111 and ordering paragraph two of Order No. 4389d.

2. That portion of Mountain Bell's Amended Motion for Reconsideration, for Rehearing and for Stay of Orders, which was not withdrawn by Mountain Bell's substitute request (See Findings of Fact 14, 15, 16 and 17) is denied.

DONE IN OPEN SESSION at a meeting of the Montana Public Service Commission held on the 4th day of January, 1979, by a vote of 4-0.

GORDON E. BOLLINGER, Chairman

THOMAS J. SCHNEIDER, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)